

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ERIC L. COLES,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:20cv197-HEH
)	
TONY L. DARDEN, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM OPINION
(Granting Summary Judgment)

THIS MATTER is before the Court on the Court's direction to Eric L. Coles to show cause why Summary Judgment should not be granted on the remaining claim before the Court. For the reasons set forth below, summary judgment will be granted with respect to the remaining claim and the action will be dismissed.

Eric L. Coles, a Virginia inmate proceeding *pro se*, filed this 42 U.S.C. § 1983 action. The matter is proceeding on Coles's Particularized Complaint ("Complaint," ECF No. 14.)¹ Coles names the following individuals as Defendants: T. Darden, the Assistant Warden of Sussex II State Prison ("SIISP"); M. Foster, a unit manager at SIISP; Bently a Lieutenant at SIISP, and A. Critton, the former Grievance Coordinator at SIISP (collectively "Defendants"). (Compl. at 1.) Coles contends that he is entitled to relief upon the following grounds:

¹ The Court employs the pagination assigned by the CM/ECF docketing system to the parties' submissions. The Court corrects the spelling, punctuation, and capitalization and omits the emphasis in quotations from the parties' submissions.

Claim 1 Defendants Darden, Foster, and Bently violated Coles's rights under the Eighth Amendment when they "unnecessarily sprayed him with O.C. gas, violently took him down to the ground & maliciously restrained his hands with metal cuffs. They also further aggravated his injuries by placing him in a hot shower to rinse the gas off his skin & placed him in another cell still in restraints for twenty hours." (ECF No. 14 at 2.)

Claim 2 Defendant Critton violated Coles's right to due process by withholding the response to his grievance which prevented him from pursuing an appeal. (*Id.* at 1-2.)

By Memorandum Opinion and Order entered on December 20, 2021, the Court granted the Motions for Summary Judgment filed by Defendants Darden, Foster and Critton. *Coles v. Darden*, No. 3:20CV197-HEH, 2021 WL 5998610, at *4 (E.D. Va. Dec. 20, 2021). Specifically, the Court dismissed Claim 1 against Defendants Darden and Foster and Claim 2 against Defendant Critton because Coles had failed to exhaust his administrative remedies with respect to these claims. *Id.* The Court further noted:

All that remains of the action is Claim 1 against Defendant Bently, who has appeared *pro se* in the present action. For the reasons stated above it is apparent that Claim 1 against Defendant Bently is subject to dismissal because Coles failed to exhaust his administrative remedies with respect to Claim 1. "After giving notice and a reasonable time to respond, the court may . . . consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute." Fed. R. Civ. P. 56(f)(3). Given the current state of the record, within twenty (20) days of the date of entry hereof, Coles is directed to show good cause why the Court should not grant summary judgment as to Defendant Bently and dismiss Claim 1 for Defendant's failure to exhaust his administrative remedies for Claim 1

Id.

More than twenty days have elapsed since the entry of the December 20, 2021 Memorandum Opinion and Order and Coles has not responded. For the reasons set forth

in the December 20, 2021 Memorandum Opinion the Court concludes that Coles has failed to exhaust his administrative remedies with respect to Claim 1. *Id.* at *2–4. Summary Judgment will be granted with respect to Claim 1. Claim 1 will be dismissed. The action will be dismissed.

An appropriate Order shall accompany this Memorandum Opinion.



/s/
Henry E. Hudson
Senior United States District Judge

Date: February 24, 2022
Richmond, Virginia